



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,068	02/04/2004	Steve Elmer	AOL0134	6042
22862	7590	04/03/2007		
GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025			EXAMINER ADAMS, CHARLES D	
			ART UNIT 2164	PAPER NUMBER
			MAIL DATE 04/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/773,068

Applicant(s)

ELMER, STEVE

Examiner

Charles D. Adams

Art Unit

2164

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-32.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: The amendments to the independent claims, "wherein said step of applying a browser test script is performed while said first browser program is under development and prior to distribution", require further consideration and/or search. .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Dutta et al. cannot teach "automatically instructing a second browser program to load and render the web pages", and goes on to say that "the cited portion of Dutta is directed to browser emulations, rather than browsers. It is well known in the art that a software emulation is a software program that imitates another program. Thus, a browser emulation is not a browser, but a software program that imitates a browser". In response to this argument, Examiner notes that the emulation programs are still programs that emulate a browser. As such, they are 'browser programs' (see Dutta et al. 7:8-21, 7:50-65 and 8:5-10).

In regards to claims 4, 14, and 24, Applicant argues that the cited portion of Dutta et al. "has nothing to do with errors. What is being described is a scorecard that rates a page's effectiveness according to a plurality of performance criteria. While a web page may rank higher or lower, there is no discussion whatsoever of "errors"". In response to this argument, Examiner notes that the scorecard outputs a percentage of tags in a document which are supported on each browser, and testing of output of dynamic scripts for compatibility across the browsers. Both of these are measures of how many and the severity of errors occurring (see Dutta et al. 8:65-9:14).

In regards to claims 6, 16, and 26, Applicant argues that "the cited teaching has nothing to do with "a representation of rendering results" or "an internal representation of a web page as interpreted by the first browser program". In response to this argument, Examiner notes that the scorecard represents the results of "rendering" a webpage. The scorecard forms a representation of results by scoring how effectively various objects on the webpage were rendered. In addition to this, the scorecard judges what percentage of tags were rendered correctly by the browser. Tags are internal to a webpage and are interpreted by a browser when rendering. Thus, the "representation of rendering results of the first browser program comprises an internal representation of a web page as interpreted by the first browser program" (see Dutta et al. 8:65-9:14).

In regards to claim 32, Applicant argues that "renderings are not being compared". In response to this argument, Examiner notes that the scorecard is a judge of how well a page was rendered using a browser program. Scores are being compared (see Dutta et al. 7:50-65).

In regards to claims 7, 17, and 27 requesting evidence for Examiner's use of Official Notice, Examiner notes that Official Notice was used in the previous non-final rejection and no issue was raised. As such, this is a new issue that requires further consideration.

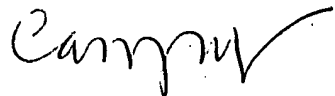
Applicant pointed out the typographical error made by the Examiner in regards to the rejection of claims 8, 18, and 28. The Examiner mistakenly rejected claims 8, 18, and 28 under the following heading:

Claims 8, 18, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al. (US Patent 6,918,066) in view of Garcia-Chiesa (US Pre-Grant Publication 2002/0099723), and further in view of Shindo (US Patent 6,865,592).

However, claims 8, 18, and 28 are dependent on claims 1, 11, and 21, respectively. Claims 1, 11, and 21 were rejected under the heading:

Claim 1, 3-6, 10-11, 13-16, 20-21, 23-26, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al. (US Patent 6,918,066) in view of Marullo et al. (US Patent 6,185,701).

As Garcia-Chiesa was not used to reject any claims upon which 8, 18, and 28 are dependent on, it is clear that this was an unintentional mistake and a typographical error. The typographical nature of this error is further evidenced by the fact that Examiner admitted in the interview of 25 September 2006 that the proposed amendments to the independent claims (1, 11, and 21) overcame the current art of record (Dutta et al. in view of Garcia-Chiesa). Thus, Examiner recognized that claims 1, 11, and 21 could not be taught by Dutta et al. in view of Garcia-Chiesa. It is clear that claims 8, 18, and 28 should have been rejected under the heading Dutta et al. (US Patent 6,918,066) in view of Marullo et al. (US Patent 6,185,701), and further in view of Shindo (US Patent 6,865,592), when considered in light of other rejections of the case.


Primary Examiner
Cam Y. Tung